(1980) 01 MP CK 0023

In the Madhya Pradesh High Court

Case No : M.F.A. Appeal No. 45 of 1976

Gurmit Kaur and Others		APPELLANT
	Vs	
Pratap Singh and Another		RESPONDENT

Date of Decision : 03-01-1980

Acts Referred:
Motor Vehicles Act, 1988 — Section 110A

Citation : (1982) ACJ 416

Hon'ble Judges : M.D. Bhatt, J;J.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.D. Bhatt, J.—This is the appeal of the legal representatives of the deceased Harbhajan Singh against the dismissal of their claim u/s 110-A of the Motor Vehicles Act in the matter of death of Harbhajan Singh in the truck accident.

2. Facts, not in dispute, are briefly these. Respondent No. 1 and Respondent No. 2 were respectively the owner and the insurer of the truck No. MPK 3313 which had met with the accident. In the said accident, apart from Harbhajan Singh, whose legal representatives have laid the claim of compensation, the driver and the conductor of the truck had also died. The truck was carrying a tractor of the deceased''s brother. It was loaded at Raipur and was bound for Delhi. Besides the driver and the conductor, the deceased as the representative of owner of the tractor had also travelled in the truck. The truck had reached Garaghat, District Balaghat, on 9.6.70 by 9 p.m. The bridge of the river Bainganga was submerged since the river was in flood. The truck did not cross the bridge during the night and stopped aside. Next day morning, the driver of the truck tried to cross the bridge. In the middle of the bridge, the truck turned turtle and fell in the river. Consequently, the driver and the conductor and so also Harbhajan Singh died. Appellant No. 1 is the widow of the deceased Harbhajan Singh and Appellant Nos. 2 and 3 are the male minor children of the deceased. The Appellant No. 3 is his posthumous child.

3. According to the Appellants-Petitioners, the truck driver, despite the protests of Harbhajan Singh, had persisted in crossing the bridge on the relevant morning, although the bridge was two feet under water. The truck was driven at a high speed. The brakes failed; and the truck slipped in the river, resulting in the accident. The Appellants-Petitioners claimed Rs. 1,50,000/- as compensation against the Respondents as per particulars detailed in paragraph 7 of the claim petition, on the basis of the deceased''s salary at Rs. 401/- p.m. as an auditor of the Punjab Electricity Board, age of superannuation, his expected longevity of life etc.

4. Both the Respondents non-Petitioners disputed the Petitioners'' claim before the Claims Tribunal. It was primarily contended that Harbhajan Singh (now deceased) was a gratuitous passenger, inasmuch as, the truck was meant only to carry goods; and the driver of the truck had been specially prohibited not to carry any passengers whatsoever, in the truck. Accordingly, the vicarious liability of the truck owner was denied. The truck driver, according to the Respondents, had tried to cross the bridge when the water on the bridge had receded. When the truck was in middle of the bridge, the front tyre of the truck incidentally got burst, with the result that the truck turned turtle and fell down in the river, a circumstance beyond the control of the truck driver. Hence it was a vis major. Harbhajan Singh (now deceased) being an unauthorised occupant of the truck was not covered under the terms of the policy; and as such, the Respondent No. 2, insurance company was not liable for compensation to any extent.

5. In the matter of the income of the deceased and the normal expectancy of his life and also in the matter of the deceased''s actual representatives, the learned Claims Tribunal upheld the assertions of the Petitioners-claimants. The learned Claims Tribunal however, in the light of evidence on record, held that the Petitioners had failed to prove the negligence of the truck driver and as such, they ware not entitled to any compensation whatsoever. Accordingly, the claim of the Petitioners was dismissed; and hence now, their present appeal.

6. learned Counsel for the Appellants-claimants has urged before us that since there is no direct evidence as to how the accident had occurred and since, as per the Respondent''s own assertions, the truck had turned turtle and fell in the river due to the sudden bursting of the front tyre of the truck, the doctrine of res ipsa loquitur was attracted and it was for the Respondents to rebut the presumption of negligence on the part of the truck driver who was in the employ of the Respondent No. 1. This presumption was not rebutted by any evidence and as such, the Respondents were liable for compensation.

7. Now, we will at first, take up the question as to whether the accident in question was a vis major or whether it was due to the negligence of the truck driver. The truck driver, cleaner and Harbhajan Singh who were the occupants of the truck, have admittedly, all died in the accident. No eye witnesses are available in the case. Naturally hence, neither the Appellants nor the Respondents could be in a position to depose from their own personal knowledge

regarding the circumstances of the accident. It is an admitted position that the river was in flood and the bridge had remained submerged under about two feet of water. It is the contention of the Respondents that when the water over the bridge had receded and when the bridge was safe for the vehicular traffic, the driver had tried to cross the bridge, but near the middle of the bridge, one of the tyres of the truck got burst and the front wheel went off, with the result that the truck turned turtle and fell in the river (Para 2-D of written statement-see page 81 of the paper book).

8. Now, the Respondents have led no evidence to indicate in the least that the truck driver had tried to cross the bridge, only after the water on the bridge had receded to an extent as to make it safe for the truck to pass over the bridge. The Respondent No. 1, Pratap Singh, has deposed before the Tribunal that when the truck was taken out from river, right front tyre of the truck was found cut to the extent of about three inches (paras 3 and 5 of the deposition). According to him, the Police Inspector had prepared the report regarding the condition of the truck and the tyres thereof. Respondent No. 1, in para 5 of his written statement is found to have relied on the report lodged at the police-station and also on the examination-report of the Motor Vehicle Inspector, in support of his contention regarding vis major. But, these documents relied on by him, are not found to be produced and proved by him In the court below. Normally, no new tyre gets burst nor the wheel of the truck ordinarily goes off. Nothing could be easier for the owner of the truck than to produce the Motor Vehicle Inspector to prove the good condition of the truck and to further prove the roadworthiness of the tyres. It could well be that the tyres in the truck were old and worn out and as such, not road worthy. The truck owner could have examined the material witnesses to prove as to when the new tyres for the truck had been purchased and used. These facts could have been conveniently proved at least from his own records, but nothing absolutely has been done in this regard.

9. In the case of Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958 A.C.J. 179 (S.C.), his Lordship Subba Rao, J., (as he then was) who delivered the judgment has an occasion to consider the case of tyte burst. His Lordship in para 5 of the judgment has quoted with approval the principles as to onus of proof as neatly summarised by Asquith, LJ., in Barkway v. South Wales Transport (1948) 2 All. E.R. 460 , in the following short proposition:

(1) If the Defendants'' omnibus leaves the road and falls down an embankment and this without more is proved, then res ipsa loquitur, there is a presumption that the event is caused by negligence on the part of the Defendants and the Plaintiff succeeds unless the Defendants can rebut this presumption.

(2) It is no rebuttal for the Defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre-burst, since a tyre-burst per se is a neutral event consistent and equally consistent, with negligence or due diligence on the part of the Defendants. When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The

depressed scale will remain down. This is the effect of the decision in Laurie v. Region Building Co. (1942) 1 K.B. 152 , where not a tyre-burst but a skid was involved.

(3) To displace the presumption the Defendants must go further and prove (or it must emerge from the evidence as a whole) either (a) that the burst itself was due to a specific cause which does not connote negligence on their part but points to its absence as more probable, or (b) if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres.

10. Circumstances of the accident substantially similar to those as in the instant case are found to have been discussed in a very recent case of Gangaram v. Kamlabai 1979 A.C.J. 393 (Karnataka), where a taxi had toppled on its offside due to a burst in its front tyre to the extent of nearly 9 inches; and on the failure of the driver and the owner to discharge the onus placed on them to establish that they had taken all care and precaution to keep the tyres roadworthy, the doctrine of res ipsa loquitur was applied.

11. In similar circumstances, the Supreme Court, in Pushpabai v. Ranjit G. and P. Co. 1977 A.C.J. 343 (S.C.), has held that normally it is for the Plaintiff to prove negligence; but as in some cases, considerable hardship is caused to the Plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the Defendant who caused it, the Plaintiff can prove the accident but cannot prove how it happened, to establish negligence on the part of the Defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident ''speaks for itself or tells its own story. Relying on the above Supreme Court decision, Division Bench of our High Court had applied this principle of res ipsa loquitur quite recently in Ramesh Kumar Vs. Gadarai and Others, .

12. The law on the point being, thus, settled, we have no hesitation to hold in the instant case that the Respondents had not discharged the onus shifted on to them to rebut the presumption of truck driver''s negligence as prima facie disclosed by the circumstances of the present case. Accordingly, applying the doctrine of res ipsa loquitur, we are clearly of the opinion that it was due to the negligence of the truck driver that the accident in question had occurred and as such, the Appellants-claimants are held entitled to compensation.

13. Now, coming to the question of liability for compensation, it may be observed that the learned Claims Tribunal has held that the Respondent No. 2, insurer was not liable for compensation to any extent, inasmuch as, the terms of the insurance policy (Ex. D-1) did not permit the carrying of any passenger. The learned Counsel for the Appellants and also the Respondent No. 1, in the course of arguments before us, have not challenged this finding. Moreover, this finding is obviously found to be proper in the light of the decisions reported in Pushpabai v. Ranjit G. and P. Co. 1977 A.C.J. 343 (S.C.), Minu B. Mehta v. Balkrishna 1977

A.C.J. 118 (S.C.) and South India Insurance Co. Ltd., Indore v. Heerabai 1967 A.C.J. 65 (M.P.).

14. So far as the truck owner-Respondent No. 1''s vicarious liability is concerned, there is no substance in the Respondent''s contention that the truck driver having been totally forbidden to carry any person whatsoever in the goods-carrier, the truck owner was not liable for the wrongs of the truck driver. In Pushpabai v. Ranjit G. and P. Co. 1977 A.C.J. 343 (S.C.) and further in a recent Full Bench decision of our High Court in Narayanlal v. Rukhminibai 1979 A.C.J. 261 (M.P.) it has been held that the act of a servant employed to drive a vehicle in giving lift to a person in disregard of prohibition, while driving the vehicle in execution of the owner''s business, is an act for which the owner is vicariously liable. From the evidence on record in the instant case, it is found that the truck driver''s act of giving the lift to the tractor-owner''s representative viz. Harbhajan Singh, now deceased, was merely a wrongful mode or manner of conduct of performing an act within the sphere of his employment and as such, the truck owner viz., the Respondent No. 1 was vicariously liable for compensation arising out of his driver''s such conduct.

15. Taking up the minor point as to whether the deceased''s child, Appellant-claimant No. 3, Ranto was or was not entitled to compensation. It is proved from the unrebutted evidence of A.W. 1 Mrs. Gurmit Kaur that she had already conceived the child before the death of her husband and as such, we are of the view that Ranto (Appellant-claimant No. 3) is equally a dependent and legal representative of the deceased and as such, is entitled to compensation along with the rest of the Appellants-claimants.

16. Now, comes the question regarding the quantum of compensation to be awarded to the Appellants-claimants. The principles on which damages are assessed have been elaborately discussed in two Division Bench cases of this Court, viz. Kamla Devi v. Krhhanchand 1970 A.C.J. 310 (M.P.) and Chaurasia and Co. Chhatarpur v. Pramila Rao 1974 A.C.J. 481 (M.P.) and again reiterated in a Division Bench case of this Court in Manohar Lal Shobha Ram v. Madhya Pradesh Electricity Board. 1975 A.C.J. 494 (M.P.). These cases have taken note of all relevant Indian and English authorities including the recent decision of the House of Lords in Taylor v. O''connor (1970) 1 All E.R. 365 . The principles deduced are that the assessment of damages in ordinary case resolves into estimating the proper annual loss or dependency, the multiplicant and selecting the number of years of purchase, the multiplier. The object is to estimate what amount should be awarded so that its income supplemented by drawings on capital may yield the amount of annual dependency during the remaining period of dependency or the estimated remainder of the working life of the deceased, whichever may be shorter. The multiplier selected is not equal to the number of years of dependency or to the remainder of the working life of the deceased, it is much less, for it takes into account that instead of yearly payments the Courts make an a ward of a lump sum payment and that future contingencies may cut short

the dependency. Growing inflation has led to the caution of emphasising that the sum to be awarded should be assumed to be invested at low interest rate, i.e., 4 to 5 per cent (Munkman, Damages for Personal Injuries and Death, 5th Edition, p. 157.)

17. The relevant facts found in the instant case are that the deceased was about 39 years of age and he was earning Rs. 401/- p.m. (Rs. 255/- salary plus 146/- D.A.) as internal Auditor of Punjab State Electricity Board at the relevant time of the accident. He would have continued in service till the age of superannuation, i.e., till the age of 58 years, the estimated remainder of the working life of the deceased, thus, comes to 19. The claimants are the deceased''s widow aged about 22 years and two minor children aged respectively 3 years and six months. The dependency would have, thus, lasted for the whole of the remaining working life of the deceased. The minor children of the deceased are expected to have attained the majority and to have settled in life near about the same period. The deceased''s widow Mrs. Gurmit Kaur, in her evidence as A.W. 1, has not stated as to how much amount the deceased used to spend on his ownself out of his monthly emoluments. In the absence of such evidence and in the absence of any other evidence on the side of the Respondents, it appears to us reasonable to estimate that the deceased must have been spending at least Rs. 100/- p.m. on his ownself and the remainder, i.e., Rs. 300/- per month for the maintenance of his dependents. This would equally cover the deceased''s posthumous child. So, the annual dependency at the rate of Rs. 300/- p.m. comes to Rs. 3,600/-. Applying a multiplier of 12, the amount that would compensate for the loss of dependency works out to Rs. 43,200/-. The present value of an annuity of Rs. 3,600/- for 19 years on the basis of interest rate at 5% also comes nearly to the same amount, see Archers Loan Repayment Compound Interest Tables. 19th Edition, p. 3660. Unfortunately, there is no pleading nor proof regarding payment of any gratuity or family pension by the employer to the deceased''s widow. Therefore, it is not possible to make any deductions in that regard. Hence, now, out of the assessed compensation amount of Rs. 43,200/- it would be desirable only to make the usual deduction for accelerated lump sum payment which, in our view, should be l/6th of the amount assessed, i.e., Rs. 7,200/- and thus the net compensation payable would work out to be Rs. 36,000/- (Rs. 43,200/- minus Rs. 7,200/-). This amount, hence, on the facts and circumstances of the case, appears to be ''just and fair'' compensation to be awarded to the Appellants-claimants against the Respondent No. 1. In the result, thus, setting aside the order of the learned Claims Tribunal, we allow the claimants'' appeal and award them the total compensation of Rs. 36,000/- against the Respondent No. 1 along with interest thereon at the rate of 6 per cent per annum from the date of the claim petition till the realisation of the decretal amount. The Respondent No. 1 Sardar Pratap Singh (truck owner) shall bear the costs of the Appellants-claimants in the proceedings before the Claims Tribunal and also this Court. The Respondent No. 1 as well as the Respondent No. 2, in the particular circumstances of the case, shall bear their respective costs through out.

Counsel''s fee of Rs. 500/- allowed, if certified.

